

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

UNITED STATES OF AMERICA

v.

DAVID AUSBURN

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**Criminal Action No. 05-224**

**Civil Action No. 11-451**

**Electronically Filed**

**MEMORANDUM ORDER OF COURT**

AND NOW, this 18<sup>th</sup> day of July, 2011, for the reasons set forth in the accompanying Memorandum Opinion, defendant's Motion to Vacate, Set Aside or Correct Sentence under 28 U.S.C. § 2255 (doc. no. 110), at Criminal No. 05-224, is HEREBY DENIED.

Section 102 of the Antiterrorism and Effective Death Penalty Act, 28 U.S.C. § 2254 (as amended), codified the standards governing the issuance of a certificate of appealability.

Amended Section 2253 provides that "[a] certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right." Where the federal district court has rejected a constitutional claim, "the petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong . . . ." *Szuchon v. Lehman*, 273 F.3d 299, 312 (3d Cir. 2001) (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)). A petitioner meets this standard if he can show that the issue "is debatable among jurists, or that a court would resolve the issue differently, or that the question deserves further proceedings." *McCracken v. Gibson*, 268 f.3d 970, 984 (10th Cir. 2001).

For the reasons set forth in this Court's Memorandum Opinion of this date, defendant cannot demonstrate that reasonable jurists would find this Court's assessment of his Motion to Vacate deserves further proceedings.

Accordingly, the Court HEREBY DECLINES to issue a Certificate of Appealability.

SO ORDERED,

s/ Arthur J. Schwab

Arthur J. Schwab

United States District Court Judge

cc: All counsel of record

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